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>> Mayor Reed: Call the Rules and Open Government committee meeting to order for October 29th, 2008. First question is, whether there are any changes to the agenda order. Vice Mayor Cortese has asked that we drop item G-1 which had to do with restoring or maintaining household items. We won't have to take that up. Any other modifications? Okay. We'll start with reviewing the November 4th, 2008, agenda. Anything on page 1? Page 2 or 3? Page 3 or 4? Or 4 or 5? Or 6? Short agenda. I'd like to talk about when we take up item 3.6, which is calling for a special recall election. I think we might just take that first thing after the consent calendar. Deal with that. And then we can finish the rest of the meeting. I would anticipate somewhat of a crowd, although based on what the City Attorney and the City Clerk had to say about we can decide at that meeting, we're really down to deciding what's the date of the election. I think that's the only question in front of the council. Maybe we won't have a big crowd, but if we do, let's get them in, get them out. Any other comments on the agenda? I have no other written requests for additions. Do we have any ceremonials circulating? I don't see any.

>> No, we don't have any on the agenda. We have one that we wanted to add under orders of the day but we're looking at rescheduling that item.

>> Mayor Reed: Okay. That is election day, in case anybody missed it anything else? And so we should notice this 3.6, and just put it on there, it's going to be heard immediately after the consent calendar.

>> Councilmember Constant: Motion to approve with that amendment.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approve as amended. All in favor, opposed, none opposed, that's approved. November 11th, meeting cancelled. So agency agenda for November 4th.

>> Mr. Mayor, members of the committee, the agency has no items scheduled for November 4th, and we would recommend with your consent that we would publish a cancellation notice for the afternoon session. We may still have a requirement to meet in closed session on item on the joint session with the city but nothing for a separate agency meeting.

>> Mayor Reed: Okay. No objections, we will do that. November 11th, no meeting. Legislative update, state and federal, we're not having any today. Meeting schedules, I had a question about the November 10th spot we were holding for a study session. Are we still holding that? It was once ooh upon a time, so there's nothing scheduled for November 10th?

>> Nothing scheduled.

>> Mayor Reed: Okay. Anything from the public record the committee wants to pull to talk about?

>> Councilmember Constant: Motion to note and file.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to note and file. All in favor, opposed, none. Appointments to boards, commissions and committees. I have a recommendation and a memo to problem of the appointment of David mills to work 2 future board.

>> Councilmember Chirco: Motion.

>> Councilmember Constant: Second.

>> Mayor Reed: All in favor, approved. Sharon hightower for one year, City Clerk, a memo.

>> The Clerk: Yes, Mr. Mayor, members of the committee, as you know Sharon hightower has been on the civil service commission for nearly nine years. We have found it very difficult to recruit an attorney who is also not a male. The charter specifies that the civil service commission has no more than four members of the same sex, and one member of the commission must be an attorney. So we are still recruiting for this position. And so my recommendation is that we approve the additional term for up to one year. However, we're doing some significant advertising now, in legal publications. We are really shaking the bushes trying to find some applicants for the seat. And hopefully, our recruitment efforts will bring a couple of candidates that might be willing that the council can consider. I'm really hoping that the term extension will be a shorter term than a year, but I wanted to make sure that we had enough time to do a good recruitment for this seat. It's very important that we keep a seasoned individual on the commission, while they're moving through some of these difficult personnel hearings. So Ms. Hightower's term expires on December the 1st and hearings are scheduled through November. That's the reason for the request.

>> Mayor Reed: Okay.

>> Councilmember Chirco: I would move approval.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to approve. All in favor, that's approved. Item G-2 we're not going to take up before 2:30, smoking free multiunit housing resolution. Item G-3 is a recommendation to amend the Rules and Open Government committee work plan to include a review of study session agendas. That's a memo that I submitted. And I just want us to have a chance to think about them, before we do them. The scope. We did have a -- I think a discussion last year, about why we're having so many study sessions, and took a close look at them, whether or not they were feed. We really haven't done that this year. I'm just proposing that as these things roll forward that we take them up here just to look at that time agendas, and try to structure it in a way that the committee thinks will be the most helpful. And that will also give them a little bit more sunshine in terms of the public's understanding of what we're doing on a study session. So that's the reason I did this memo.

>> Councilmember Constant: Motion.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. Item G-4 is a recommendation to add to the November 18th council agenda item to review and discuss the San José police department's policies for handling individuals who are intoxicated in public. Review and discuss statistics and data related to public intoxication arrests. I have a memorandum I signed along with Councilmember Campos and Nguyen recommending we do that. Comps from the committee? Councilmember Constant.

>> Councilmember Constant: Mr. Mayor, I know at the last Rules and Open Government meeting we had discussed this and talked about the November 4th date. This is a topic that I have significant interest in, and I won't be in town on the date that we ended up changing it to. So I was wondering if there was any potential to change that date, either to the November 4th date that we originally discussed, or the next meeting after this one, which I believe would be December 2nd.

>> Louder, we can't hear.

>> Councilmember Constant: Sorry about that, I was asking for the date to be changed to either November 4th or December 2nd.

>> Mayor Reed: I don't think the department would be ready on November 4th. The chief is here and we talked about that a little bit and I think that is too soon to be prepared. City Manager saying that's too soon. So we meet November 18th and then we don't meet the week of Thanksgiving and then the next meeting is --

>> Next meeting is December 2nd.

>> Mayor Reed: Next meeting is December 2nd after that. So what about moving it to December 2nd? What else do we have happening December 2nd that might be in the way?

>> This morning when we reviewed our horizon report December 2nd, it looked like November 18th just what we have programmed now, looks like a heavy agenda. So for an agenda management perspective it would work.

>> Mayor Reed: Any other thoughts, anybody, on moving it? We have an evening meeting on the 2nd, so that would be the evening of the 18th or the evening of the 2nd, to part of that. I think that would be okay. So as long as it's okay with the manager who's got it prepared for the meeting.

>> The Clerk: December 2nd?

>> Chief, you'll be here?

>> Mayor Reed: Do we know anybody else who will be absent on December 2nd if we bumped this?

>> The Clerk: No.

>> Mayor Reed: Because Councilmember Campos I believe will be back the 1st of November. That shouldn't be a factor. Okay. Looks like that would work.

>> The Clerk: So that's December 2nd in the evening?

>> Councilmember Constant: Yes, so thank you for the accommodation and I would make that motion.

>> Councilmember Chirco: Second.

>> Mayor Reed: All in favor, opposed, none opposed. Item number G-5 is a request for additional information regarding citywide inclusionary policy. We have a memorandum from Councilmember Constant and Oliverio on that item. Leslye Krutko is here to join us. Councilmember Oliverio. Welcome.

>> Councilmember Oliverio: Thank the committee.

>> Councilmember Constant: Do you want to start or --

>> Councilmember Oliverio: I don't have any massively prepared notes. Councilmember Constant and I have a memo prepared, on the various matters on the outreach. I would just say this. I just came from a luncheon with Larry Stone who said this is the worst economy he's seen in his lifetime. That is a local

metric. Our county assessor who is directly attached to homes. We have a ten-month backlog on the market for housing. When we think about housing, the builder, he or she gets it entitled, but they need to get money, they need to get money from the bank. And that bank has a decision where it lays its capital. It can lay its capital in San José with a new restrictive rule. Or it can lay its capital in another city that doesn't have such a rule. When it comes to this, we act in a vacuum, we take nothing into effect what's going on nationally or internationally. We enact policy by whatever measures of Christianity or Judaism, it doesn't work. What we're asking for is five different recommendations, certainly I'm amenable to being amended or folded or something. But something that comes back with this possibility. Because I think in the end if we go forward the way we're going we're going to have the specter of not really having an outreach process that was truly valid. Because if you ask the citizens of San José that reside on our streets their viewpoint on this issue is in a massive contrast different than what we have on the council. And I think we need to be reflective of that opinion that exists on the community and the global and national economy. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: If I could tag on to that. I'm really concerned about the outreach and I've expressed this lots of times. You might remember my concerns about the outreach meeting in district 1, that I happened to find out about because it was on a memo I was reviewing, on page 4 or 5. My office was never specifically notified about the meeting or asked to help the outreach so that we could get people to attend. The meeting came, there was one resident from district 1 at the meeting which just happened to be an employee of the housing department. I contacted eight of my neighborhood leaders. Not one of them had been advised of the meeting, even though they had been neighborhood presidents for a long time. Our NACs which we obviously know how to get hold of our NACs were not notified. Because the housing department used a method of outreach with old lists that had old e-mail addresses on them instead of going through the council offices which had latest information. I've had numerous conversations with developers who have told me that they do not feel that they've been given the opportunity to express concerns with inclusionary zoning. That was confirmed when we had a meeting here a short time ago where our housing director said that they had, in fact, expressed that they did not want to hear the reasons that inclusionary zoning wouldn't work, because their goal was to create a policy. Now, while I agree that they should be looking for the best policy that they can propose, we cannot close our eyes to the reasons that people feel it will not work. That is a very narrow perspective to go and to not listen to the concerns. I've talked to many developers that have told me that they have been told, rather bluntly, it is coming whether you like it or not, let's see what we can do to mitigate your concerns. I don't think it's a great way to create any policy. I think we should be looking more holistically. We should be looking at what the drawbacks are as well as what the benefits are. We should be looking at what alternatives potentially could be. You know, anyone who's read a council memo knows that when we get a policy recommendation, there's usually several policy alternatives. The only way you can have viable policy alternatives is if you actually take the time to look at those alternatives, and do some analysis. That has not been done. I know I've expressed my concerns about the failure to look at several of the economic studies on both the positive and negative aspects of inclusionary zoning, to have a critical look at that. I'm just concerned. I do not think we are approaching this correctly. I've voiced my concern many times. We have one opportunity to do the outreach correctly and to do the research correctly and that is now. I also wanted to point out that last night, we were discussing taxicab fares. A topic that took six to nine months to deal with. With multiple outreach. And we had complaints that we were progressing with changing the taxicab fares, when we had only had 75 days since the council had announced it, and people didn't know it was coming, and we needed to do more outreach. We're doing the same thing here, on a policy that is much larger that is going to touch more people that's going to affect every neighborhood in the City of San José. We have a neighborhoods commission that's going to be seated just after the first of the year that one of their specific task force is to look at policies that affect the city as a whole. This is, quite frankly, specifically what they should be looking at, at how it's going to affect our city, and its neighborhoods, and its residents. And that is something that we are short-changing. I really feel that a decision has been made to close our eyes and move forward. And we cannot do that if we want to develop the best policy. If we don't look at the alternatives, we will not know if inclusionary housing is the right answer or not. We have not looked at simple things like how many housing units did we create in the last decade? And why were we successful in that? If we created more affordable housing units than any other jurisdictions, maybe we were doing right. Make we should look at how we can enhance those efforts to create more. But we have not done that analysis. If it has been done, it hasn't

been presented here. It hasn't been presented to the council. I feel that we're going down a path with our eyes closed.

>> Mayor Reed: Staff, could you talk about just refresh us on what the schedule is that we have council direction, work plan which we modified, maybe once or twice. Could you go over what that is?

>> Leslye Krutko: Sure, Leslye Krutko, director of housing. I have John Weis here. We really have been on this for a year, we started in December of last year before council, and at that point we headed forward and with a study of the economic impact and had several community meetings at that point to obtain that input. We then went to council in June, at that time we were given direction. It's important to look back at the direction because this is what I stated last time I was here two weeks ago. We were specifically directed by the council to return in the fall with an inclusionary housing proposal for council approval that contains a range of alternatives which included a minimum, the following, and it's things such as expanding inclusionary beyond project areas, looking at a pressure release valve, looking at how we protect projects in the pipeline, allowing flexibility, other things like that. That's what we've been doing in our outreach. We have been following what we were asked to do by the council. And John and I have met individually with more than 35 different people, largely the development community but some interest groups such as the Realtors, tricity, the home builders and a few housing advocates as well. We've also held a series of community meetings at this point to get input on inclusionary and what we should be looking at as we come forward with the policy. We are now at a point where we are -- we're coming into several citywide meetings that we'll be having to educate the public about inclusionary and some of these ideas that we've been talking about. All of these meetings along the way I'd like to respond to the outreach concern because we have looked at the new community outreach policy and even without being subject to that we believe we've exceeded it substantially. We have over 700 people on our listserv of people who have asked to participate, we have libraries, community centers, they've been posted in newspapers in three different languages and we have send informational memos to all the city council office is. I will be happy to send the e-mails to all the people included and I'll provide a list of all the people we've received notice to. Some councilmember offices have received six notices of these neighborhood meetings that are upcoming. That shows we have a flaw in our mailing list but I think it's also that we're sending to several different mailing lists that do have some overlap. So coming forward after these four neighborhood meetings which will be happening November 3rd, 6th, 10th and 12th, we are going forward to the Planning Commission and to the housing commission which are the two commissions that oversee zoning and housing issues. And then we will be coming forward on the 24th to the community and economic development committee and on the 25th to the neighborhood services and education committee. And then we expect to come forward on the 9th to city council. John and I have talked this week, we have decided we would like to add an additional meeting with the development community where we will go over more of the detail of what we think the policy will be. And that will -- we want to give folks at least two weeks' notice. So we'll probably be sometime right after the 12th of November that we will be setting that for. Not just the development community but the advocates as well. We'd like to be able to roll that out to them, what it is. So they see that before it goes to the council committees. So I think by the time we're over, we will have had probably a dozen to a dozen and a half public meetings, as well as all of the one-on-ones that we've had and then council meetings and discussion.

>> Mayor Reed: Okay. Well, this a déjà vu, we've had this discussion before about how to bring this back to the council and what to do with it. I want to make sure when it comes back to council we're getting that range of alternatives. Because that was part of the direction that you just read. But we also have a range of alternatives, what the council can do, whenever the council takes this up. Council can say, no change. Because it's a bad idea. The council could approve some changes, one of those ranges of alternatives. And the other thing that occurs to me that council could do is, along the lines of what we did with the North San José changes, in which we pretty much had a policy drafted, prepared, and then the staff went out and did outreach based on the actual policy, proposal, before it came to the council. One of the things I am concerned about, many, many, many years going through planning issues, is that people don't pay attention. They don't react, they don't get engaged until there's something concrete. So you can have citywide general plan hearings, and I've been to many of them. And the staff always outnumbers the public. But when you get down to a zoning, then that's when the public's engaged and the decision was made long before. So there may be some value in taking whatever policy direction the council wants to go back out for more, you know, public input and review. That's one option the council could do if this comes to the council on December 9th. Seems to me that the questions that have been posed by Councilmember Oliverio and constant should be what the staff is prepared to respond to on the 9th. In

some way these are certainly legitimate questions that we have been talking about. The one thing I guess you can't really do is, the neighborhoods commission, since there isn't yet a neighborhoods commission. You couldn't get them into this discussion like you are with the Planning Commission and the housing commission.

>> Leslye Krutko: There are several of the recommendations that are in the memo before you that we think that we can accomplish. And clearly, we can bring forward the input that we receive during public outreach process. And so we're prepared to do that. We can -- but again, at this point in time, because it - - we need to have the time to do this, we would recommend that go to the CED and the neighborhood services and education committee, rather than to the Rules Committee, because both of those will -- the committees will be reviewing this. We also can do the analysis and comparison of the affordable housing unit production, and that's similar to the direction that the council gave us originally in June and we can do that. And then, we can -- we can also look at a study of various alternatives which I think is recommendation number 4. And we can do that. I'm worried about the idea of the economic impact analysis which is a pretty large request to do at this late date. And so I'm worried about that. Again, we can look at alternatives and we can provide those, what that might look like. On the neighborhoods commission, there are two things. I think Norberto is in the audience and can respond to this as well, but neighborhoods commission won't be seated until after the first of the year.

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Chirco: On the neighborhoods commission there was specific direction that the neighborhoods commission was not to -- if I can find it here -- it was in a memo. Duplicate and Planning Commission or parks and rec or historical, there was specific direction they weren't to duplicate existing commission work.

>> Mayor Reed: Well, we don't even have a work plan yet for the neighborhoods commission, right?

>> Councilmember Chirco: No. So that was --

>> Councilmember Oliverio: Just believe the idea behind it was since this would have an impact on all neighborhoods, that neighborhood representatives should have an opportunity to make an impact. Understood it's not seated yet but purely a suggestion to let that item out there. Just one quick comment. Appreciate that some councilmembers got six notices of a meeting. But I have a meeting that is half-mile from my house, on Monday night, just found out last night. Just it shouldn't be a policy that councilmembers get notified, but it would be a amount of distrust if a councilmember weren't notified.

>> Councilmember Constant: And if I can add, no attempt is had to have another meeting in district 1, and I found out about district 6 when Pierluigi sense me the notification that he had finally got. So if I'm not on the distribution list as one of the 10 councilmembers in the City of San José and I can't notify the people that I know who are the leaders in my district, and if I can clearly tell this committee on multiple occasions, and the director of housing and the City Manager that I'm concerned about the outreach in my district, and I can't even get that corrected, there is a problem. And, you know, I hear staff saying they can come back with many of these things. But how can you come back, and talk about the concerns that people had on why it won't work, or why they feel it won't work, if they were told they couldn't express those concerns at the meetings? You can't just create that type of information. People were told it would not be productive to discuss that today, we are going to do this. And if you don't have the information, you can't simply prepare a report and comply with it. And I know that the analysis of economic impacts is difficult. And you're right, it probably can't be done by December. But it's integral to this type of a policy. It should have been done already. We should have been looking. This is not the first time I've brought up these other economic reports. I've brought them up a dozen times. But it's fallen on deaf ears. And all I'm asking is that we do the work. And I also brought up, at the last Rules Committee, we're having these two committee meetings on a holiday week, on Thanksgiving week when a lot of people are not available to attend them. Just one more area where we're not doing the out-- we're doing outreach but we're doing it in a very modest attempt. We're not trying to accommodate residents. We're not trying to notify all of them. I just -- I still don't understand why I can't be notified so I can notify the people in my district that I know and that I have identified.

>> Leslye Krutko: I did want to mention a couple of other points, just because I feel I need to respond to the concern that we may have said, this is coming whether or not you like the or not. You know, I can have John respond to that because we've been in all the meetings. I think we've been very clear that it's our job to come forward with a policy, because that's what our direction is from council of the June meeting. And the policy itself whether or not to go forward with the ordinance, whether or not to change what it is we propose or whether to oppose it is entirely up to the city council and we made those

statements in those meetings. So our job was just to come forward with the best possible policy in the event that the council does decide they want a policy of this kind. So that is what we're working on. We also, just to clarify, were not asked to come back with an analysis of whether or not this was a good idea. We were asked to come back with a policy looking at a range of alternatives. And that's what we're prepared to do.

>> Mayor Reed: Okay, let me just ask people who are standing two or three deep, there are some empty chairs here. We'll have to open up another room, if there are empty chairs, fill them.

>> The Clerk: If you're a member of city staff, you can perhaps come and sit at the staff table here. That would leave a couple of chairs. We have too many councilmembers here also.

>> Mayor Reed: Okay, Vice Mayor.

>> Vice Mayor Cortese: Just going to say, as people speak, I don't want to try to be the sole person here to try to frame the issues. But it seems to me that the issues that come out of Councilmember Constant's office and Oliverio's office that are before us today, are similar to ones that were brought up a couple weeks ago, in that one issue is, is whether or not the council, as I hear it, whether or not people feel that the council properly directed staff, particularly the housing department, in its charge or not. Because they're trying to carry out the charge that was given them, and if there is a problem with that or people feel that it needs to be sort of remanded to the housing department in a different way, then I'd be interested in hearing that from people who are speaking, you know, or not, either way, and secondly, there's an issue as to whether or not outreach is sufficient. Irrespective of whether the charge is correct, you know, irrespective of whether or not they should be trying to form a policy or take input on whether we should form a policy, are we capable of doing the outreach given the resources at hand. And that could be a resource issue in and of itself. I'd like to hear from people. I'm going to sit and listen to a few speakers, I'd certainly want to know how people feel about those things if we have time, thank you.

>> Councilmember Constant: I wanted to make one more comment. It's clear from the comments of the housing director and the mayor and my memory was the council direction was to look at alternatives. I don't think that has been done. I'd like to ask very directly, what other affordable housing alternatives have been researched as part of this project and presented at these community meetings?

>> Leslye Krutko: The alternatives that we were asked to look at were alternatives relating to things like a pipeline, and like the trigger and other things of that kind, what percentages of the units, and that's what we have been investigating. We did, however, hold one meeting that was specifically to talk about or the alternatives in case the community wanted to offer those. So we're prepared to talk about what was raised at that meeting as well. And as I said, we're also willing to follow your -- your recommendation that suggests that we identify what those alternatives might be. But as far as what we were asked to do in the meetings, and -- it was to look at alternatives relating to a policy, the kinds of pieces of that policy.

>> Councilmember Constant: See, I have a different interpretation of what I thought the council discussion was. And I'll go back and watch the meeting again. But I thought from what I heard you say mayor that that was your interpretation as well in your comments today. And the last time we discussed this. So if there was one meeting about alternatives, my district wasn't notified of it, and that it was going to be specifically for that, and I know I wasn't. It's not that hard to send an e-mail that says councilmember, this meeting is going to happen in your district about this. And it's obvious the staff has not analyzed any alternatives, and that troubles me.

>> Mayor Reed: Well, we don't have a staff report yet, so it's hard to know what alternatives they might be able to bring to us in advance. I've got some people who want to speak on this item, I think I'll take them now. And then maybe after they speak, they can leave and make room for somebody else to sit down. Up to them. The council chambers are open so anybody else that comes in we're full here I think, right? We're over. So anybody else that comes in will have to go to the council chambers. And then you can come in after some people have left. So let me just take these public speakers. Bonnie mace? Chris block, and Pat Dando. In that order.

>> Councilmember Constant: I think you have to turn it on at the top.

>> It has to warm up. I'm short so that's easy. I'm Bonnie mace chair of the housing commission and I believe we should move forward in this process for three reasons, and in large part these raise the concerns of the two councilmembers. Number 1 the housing staff has done due diligence in terms of its public outreach, in temps 630. I have attended all the following meetings that we've done in terms of public outreach and I can testify to the fact that at that meeting no one was ever told you cannot say anything. Everything was open, everything was recorded everything was on the table. And this is just a partial list and I'll just be very fast with this. Over 35 one on one meetings with the developers, four

community meetings which will be scheduled for November, at every housing commission meeting for the last three months we have discussed this issue. A focus group with affordable housing advocates, a public meeting with inclusionary housing alternatives which is the item here and many, many other public meetings. We've had probably almost 50 meetings with the various stakeholders and at any time nobody was told we are not look at what you're saying everything was recorded. Housing staff has looked at a comparative analysis in terms of cities. They've looked at the following cities. They have looked at Santa Clara, they will have interviews with Fremont, San Francisco, San Mateo. They have done quite a bit of comparative analysis already in terms of looking at other cities, what works, what doesn't work, impact, affordable housing situation in San José in terms of incentives and such. And third the housing staff has done due diligence in reference to the council's direction. In fact they were directed to come back with a policy that included alternatives, they have done so, and so for these reasons I feel like we should move forward with the existing time line taking into account of course the concerns and understanding that public outreach to the best of our ability has been accomplished. Thank you very much.

>> Mayor Reed: We have several other things on the agenda including Sunshine Reform Task Force items. So I'm going to have to limit speakers to one minute on this. Chris.

>> You got it mayor.

>> Mayor Reed: Pat Dando.

>> As these gray hairs will attest I've been involved in policy in the city for over 20 years and quite frankly I've never been involved in the formulation of a policy that has had more comprehensive outreach. I really feel the outreach has been accomplished. May not be perfect but it is surely good. It is exactly at these economic times that I contend that we can craft a policy that is the most responsive to the most difficult times and those are usually the best policies. Thank you.

>> Mayor Reed: Pat Dando and then Richard Zepelli.

>> Thank you, I'm going to have a little bit of a different point of view, I think it's exactly these times when we need to step back and make sure we identify what the goal is. I hope if this is to develop more housing, it is all types of housing. I think it's a flawed policy when you send staff out to do research on only one aspect of a need and if it's only through inclusionary zoning. I think the outreach may have been perfect, it may have been as extensive as I know staff always does. But the result has been somewhat limiting. My staff, and other members of organizations, have attended every single meeting. And there has not been more than 10 community members at any one meeting. And generally it's far less than that. So I think someone said earlier, this is an issue that not many people are really interested in. Until it hits their neighborhood, or until it hits them particularly. So I think that the outreach may have been fine. The attendance was not.

>> Mayor Reed: That's your minute.

>> Mayor, I want to say one more thing. I know other speakers have had a bit more time. Bear with me because this is important.

>> Mayor Reed: Be quick.

>> The economic issue is very importantly. We have to know the impact of the policies that you're looking at and finally I just say that the research that you're doing I understand perfectly the reason that you divide up and do individual interviews. I've been on your side of the table. I know why you do that. That's not the best way to get good communication, good brainstorming on policy. I would offer to convene a meeting of home builders and bankers to get together and look at this from the perspective of doing business and building houses.

>> Mayor Reed: Okay, I got to stop you there Pat, thank you. Richard Zepelli and Carey Hamilton.

>> Good afternoon, Mayor. Neighbor of the woe begone neighborhood community. It's difficult for us to respond when the meeting notice goes out so late. We had a newsletter that goes out last month, we just had a land use meeting, we could have scheduled that for the newsletter, we missed that. People are concerned about the shortage of funds, the parks, it is a citywide problem, but on the Willow Glen Paula and Lincoln, we have a project going there, it is part of a 16 block project that already has a lot of affordable housing in it, maybe 90%.

But there's no park there for these people. Most of the families both members of the families are working, their children have no place to play during the daytime. Or their parents are at work. This creates a lot of problems with the --

>> Mayor Reed: Time. Sorry. Carrie Hamilton and then James Zoretka.

>> Thank you. I have a lot of concerns with what I've read in the memo, both contradictory things and things that just aren't factual. It says public outreach hasn't captured numerous concerns. Staff put a

matrix together of all the comments they had good and bad from the development community and everyone else to capture those concerns. The staff heard the development community cite the current economy, as a result they came with ways to address that concern through triggers pipeline delayed implementation recommendations, as well as the pressure valve. If staff had ignored these comments why did they become key discussion points in the meetings that I was in? The end of the memo talks about concern about staff time, and the -- and that they should be focusing on economic development. Well, housing staff isn't our economic development staff and if you're so concerned about that issue then why are you recommending that staff go back and do this laundry list? It just doesn't seem very credible and authentic to me.

>> Mayor Reed: Your time is up. James Zoretka, then Neil Buber.

>> Thank you Mr. Mayor. James Zoretka, law foundation of Silicon Valley. You got a letter from me so I won't rehash it. The process was a model of inclusion and fairness. I agree with the mayor's item of getting more comments after the actual language is out. I think it's a very good idea because as you say when the rubber is hitting the road it is when a lot of people pay attention and that's when the details sometimes get complicated. So I think that's a very good suggestion. I would agree with that. I also think the Vice Mayor's charge about the housing department is an excellent one. They fulfilled their charge. Specifically set out in the minutes, return in fall 2008 with an inclusionary housing program. That's what they've been doing. It seems highly unfair for hammering them for what council told them to do in the first instance. From a human relations point of view, I think it's very poor form the way the housing staff has been treated in this memo today. It seems to me that they're not hiding the ball and if I were supervisor I wouldn't treat people working for me like that. Totally unsubstantive point but I think it needs to be made.

>> Mayor Reed: Time is up.

>> I'd like a little more time as Ms. Dando had.

>> Mayor Reed: Ten seconds, how about that?

>> Sure. Fair and by studies, 9,000 units in the Bay Area alone and it did not have a negative effect on production or prices. Thank you.

>> Mayor Reed: Anil Babar. Sandy Perry.

>> My name is Anil Babar. Not enough has been done to look at the alternatives and the problems with inclusionary. I think we should go forth with the five recommendations that the memo outlined and as I said before, Santa Clara County association of Realtors are opposed to inclusionary. Thanks.

>> Mayor Reed: Sandi perry and Ed Rast.

>> I'm Sandi perry, from CHAM delivery. A couple of days ago we had a conference on the right to housing. We are in a crisis. The economic situation is an argument to move forward quickly, as quickly as possible rather than stopping. The foreclosers are tightening the rental market and the slow economy is increasing the need. I'd like to point out that builders always oppose inclusionary zoning, that's their jobs, good times and bad. They always say the time is bad and there's not enough outreach. I'd like to respond to Councilmember Oliverio that said it's a good moral policy but it won't work as the speaker before me said it's worked in other cities all over the Bay Area. Thank you.

>> Mayor Reed: Ed Rast.

>> Ed Rast: Ed Rast. One of the questions I have on this whole policy is who pays? Basically any time that you have a policy that requires somebody to basically have -- be you know costing for instance, who -- does the city pay? Does redevelopers pay, do the developer or market rate buyers pay for inclusionary housing? Second point. That's important because that affects our city budget in a deficit. The second point is the comparable studies that were done were not done to like-size cities. What I mean by that is, very few cities are in the seventh year of a budget deficit, have very high taxes and service fees compared to San José, have only one half the jobs of the surrounding cities, lose one sixth of their sales tax to other cities, have a \$3.5 billion unfunded obligation for the General Fund and where development contributes a higher percentage of sales tax and local employment. So the cities mentioned just previously none of them are comparable to these numbers. Santa Clara has 220 job per employed person and surplus, we don't.

>> Mayor Reed: Time is up. That completes the public comments on this item. We need to -- got more? Mark Lazarini. Anybody else, wave your card, okay.

>> Good afternoon, mayor and members of the committee. My name is Mark Lazarini of Dow properties. When we started this conversation we tried to allude to the fact that the industry was in a very serious recession. Well, while the rest of the economy slips into a recession, we're in a depression. So

the stakeholders' concerns I think are reflected in the memo that Councilmember Constant and Pierluigi wrote. I think those should be taken into consideration. I believe time is on our side, in fact, it's on all our sides. We are not going to recover any time soon. So let's take some time, let's do it right, let's make sure all the issues are addressed. If there is an economic impact for inclusionary policy you better believe there's going to be a fiscal policy. The fair share that has been allocated out which are some of the bases for proceeding on this were probably done in a much rosier time than we were now, and I don't think they foresaw the type of housing crisis we're in. I wouldn't be a bit surprised if those numbers should be adjusted downward and we should be look again at what we should achieve and accomplish. Thank you.

>> Mayor Reed: Jennifer Rodriguez and Roger Lobes.

>> I'm Jennifer Rodriguez. Representing the home builders association. You all have heard from me on a number of occasions. I know you know what our association feels about this policy. It is quite easy to appraise the process when you are aren't the primary stakeholders. I think it's a fair request. All we've asked to have our concerns addressed and we continue to ask. We have been promised a full workday where we sit down with city staff and discuss clear alternatives. We are still waiting for that. That hasn't yet happened and I just want to thank the councilmembers, scant and Oliverio, for bringing this to attention and doing their best to create some more trust in the process. Thank you.

>> Mayor Reed: Roger Lobis. Anybody else after Roger?

>> Good afternoon. My name is Roger Wilbis, I represent Pact, at trinity cathedral. We notice in the memo that there was a question, do we need inclusionary zoning, I think that's rather foolish if the auditors review the testimony in June, they would heard from a nurse that said, by golly, I can't afford to live here. And I know the police department is represented here and I'm sure their staff feels the same. And as mentioned the foreclosure crisis demands access to affordable housing so let's get on with it. Thank you.

>> Mayor Reed: Shiloh Ballard.

>> Shiloh Ballard with the Silicon Valley leadership group and I too want to commend staff on the process and want to cite one specific example to illustrate that point. When they were going about developing their process, they decided to do the one on one meetings and facilitated stakeholder group meetings. And the reason was because they wasn't to at least my understanding they wanted to take themselves out of this process so it was fair and inclusive. We were included in their interview panel to select a facilitator for these. When we interviewed the -- when we had our first set of interviews, we didn't like who they brought, and we said no. We, meaning the HBA was there as well. And they listened to us and they said okay. Let's go back to the drawing board and bring some more candidates and they did and we ended up selecting a facilitator. I wanted to cite this as one concrete example how seriously they have taken this process and tried to really make it fair and take themselves out of it so people can feel they can operate input and it is not biased or filtered.

>> Mayor Reed: Sorry, your time is up. Anybody else? Now we're done with the public testimony. Back for the committee, Vice Mayor.

>> Vice Mayor Cortese: I talked about the charge of the council earlier. I didn't vote to support that charge, at the time. Because what I was advocating for is a different process. And I talked about that a couple of weeks ago and although there are some new people here I don't want to rehash that. But I think until you know you take a step back and look at the broader question here, which is how is the city going to build 19,000 affordable housing units over the next seven years, then we're not going to get the answer as to how is the inclusionary policy if there is going to be one, how does it fit into that overall goal? Because what inclusionary does, as we all know, it's not a 100% builder. It takes your market rate numbers, and it takes a percentage of those, typically 20% or 25% in other cities, and -- and you use that to try to get -- to try to get to your affordable housing goal. Well, in a great year, in a great year we're building 2500, maybe 3,000 in a great year, affordable market rate units in this city. So do the math. If we were real aggressive and said 25% of that needs to be affordable by inclusionary, what does that get us per year, it gets us five or 600 units per year multiplied by 12. That is the end all be all discussion, I think the problem here is, I was one trying to make the argument back in June. Pete, I don't know what all the councilmembers were saying, what the various arguments were, people were concerned about process but the fact of the matter is, on a split vote, the council said, naw, let's go out and do an inclusionary policy, that's what we want to do, that's what we're going to do. So the broader discussion isn't happening and it really is unfair to charge the housing department with convening a discussion around -- a broader discussion about how to reach the overall goal with all the tools we have in the tool box when they haven't been charged with that. So my concern is this, trying to come full circle to where we are at today. I don't

know that the rules committee has the authority without going back to the council to change the charge of the council. And even though I think you can tell by my comments I'm sympathetic with that, mainly because I'd like to see something good come of all this, I was president of ABAG for the two years when we did the regional housing needs analysis, worked with our Planning Department, housing department, advocated for the 19,000 number. I was on board with the 19,000 number. I'm all for it. But we need this broader discussion. And whether you're -- not to single people out, Chris Block or Pat Dando, to me that's the broader discussion that needs to happen. And I think as a city we're capable of convening people and having that discussion whoever -- whomever leads the discussion. Obviously the housing department needs to be one of the lead departments on that. I don't know where to go from here or what to suggest, you know if the Rules Committee is interested in going back and revisiting the process and the charge of the council it seems to me there would have to be a referral to the council to take that up. And of course I'm willing to do that. Again, that should be obvious. But you know, I don't know what that does. I don't know if that's perceived by people as a delay tactic or something else. But I think if that was done in good faith and it put us on the path of accomplishing our affordable housing goals, it would be a good thing. If it's done it's just a delay tactic to try to set up a subsequent train wreck then it's not a good thing for the city. That's how I feel. I'd be interested in hearing from the authors of the memo.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I wholeheartedly agree that affordable housing is a need that we have to deal with, no doubt in my mind whatsoever. I am concerned with what you just brought up, and that is the fact if we don't look at all the tools in the tool box we may come up with something that is not the best way for the city and not the best way to address these issues. Now, we've been at this for a while. And this is as many people have said one of the most important policy decisions the city's going to make. What is the harm in taking 60 or 90 more days to do it right? And I would like to see the council, I agree with you, Vice Mayor, this memo more appropriately written should have said to ask the council to reconsider its direction to be more broad and inclusive. And I think that's the motion that I'm going to make right now, because I think it's important that we have the discussion, and we find the best alternatives for the City of San José. So my motion would be to move this memo to the entire council for consideration of expanding the direction, so that we look at all alternatives in affordable housing, we include the economic studies, and we correct some of the issues with outreach, and that council should have that discussion. And I would do that with dropping item number 5 on the memo which is the reference to the neighborhoods commission.

>> Councilmember Chirco: I have a question, Chuck, mayor.

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Chirco: Heard what Councilmember Cortese has said and Councilmember Constant. I could possibly support this motion if the direction that was given to housing department back in June, I believe, that package goes to council as directed. So that we have the information that council directed staff to bring forward in the fall of 2008.

>> Councilmember Constant: I'll include that in my motion if that was a second.

>> Councilmember Chirco: Because I -- you know thank you Pete, I appreciate that. Because I think housing has done what council requested. I have all of the memos and the transcripts and the directives, and so I respectfully disagree with councilmember Pierluigi and Councilmember Constant. I think housing has done an excellent job following the direction of the council. And the issues as outlined are really issues that need to be discussed at that time council level. So Councilmember Constant has met my request, so I would be supporting that motion.

>> Leslye Krutko: Mayor, is it possible to comment?

>> Mayor Reed: Yeah, let's try to figure out exactly what the motion is. The motion is to refer this memo.

>> Councilmember Constant: Absent number 5.

>> Mayor Reed: 4 bullets for consideration. Councilmember Chirco, what did you want to add to that memo?

>> Councilmember Chirco: I wanted to add per the direction of council in June that the information requested go back in the format that the council directed staff to bring it back. My one concern would be the economic -- that I believe in Councilmember Constant and Oliverio's memo, they wasn't an economic study. And I heard the director say that that -- I just don't know that that would be ready at the same time. So that can be something the council can discuss.

>> Councilmember Constant: Exactly.

>> Mayor Reed: Well, I think this is a discussion that council has to have but I think we need to let the staff finish their work so council can have the discussion and all the issues that have been raised by Councilmember Oliverio and Councilmember Constant, are valid issues for the council to discuss. The question is at what point and what context. Councilmember Chirco if you are saying we need to get all the information that the council directed back in June, isn't that what staff is working toward?

>> Councilmember Chirco: That's exactly. They've done as directed by council, and I wanted that information to come forward as it was directed in the June council meeting. Did I capture that right, Leslye?

>> Leslye Krutko: That's where I wanted to have some clarification.

>> Councilmember Chirco: Okay.

>> Leslye Krutko: Because as I indicated we can pull together some of this information for discussion at that time. So it's by the time that it goes to the CED and to the neighborhood services committee.

>> Councilmember Chirco: Right.

>> Councilmember Constant: I don't think that was the intent of my motion so let me clarify. I was saying that we check in with the council, and have the council address whether the council should direct staff to do this work. Before the council makes its final decision. Because I feel we need that information before we make the final decision.

>> Councilmember Chirco: Then what I would ask the maker of the motion is, the direct was it was to go to economic development, and to the neighborhood services and education. And then to take all of that information and it was to go to council, December --

>> Leslye Krutko: 9th.

>> Councilmember Chirco: December 9th. Would the maker of the motion agree to that, to bring all of this together at the December 9th meeting?

>> Councilmember Constant: I don't think city staff can do all this, is my concern. I think what we're -- I think what I'm being asked, and the City Manager should probably jump in, is based on the Vice Mayor's comments and which I agree that the council gave direction, that council should look at this and decide if this is information that we should have prior to making a decision. I believe it is, and I know Councilmember Oliverio believes it is. So that we can clarify direction from council.

>> City Manager Figone: May I jump in?

>> Mayor Reed: Please.

>> City Manager Figone: So my question is, are you directing a time out to do a process check and to validate the path we're on or to broaden that path and perhaps extend the time line or are you interested in proceeding to bring the completed staff work such as we've been directed, evaluate where we're at, and then from there, determine if more is needed, outreach, studies, time, you know, whatever it might be? So I'm not sure if this is a process check or if it's a proceed and comment and then take the next steps.

>> Councilmember Constant: My feeling is that work can continue. But before the council makes a decision, council should have this discussion on whether we should direct more work to be done so the council can make a fully informed and educated decision. Is that clear?

>> City Manager Figone: Well, that would say you don't want to see a product but you want to have a conversation about the product that's in process.

>> Councilmember Constant: And the alternatives that we discussed, looking at alternatives and economic study, before a final decision is made.

>> Leslye Krutko: And if I can, there will be the opportunity for that, because we will have that available, and have several meetings where that will be discussed prior to the meeting of the 9th. But -- so we will have that information available so that discussion can take place.

>> Mayor Reed: I think the real question is whether or not we put this on the council agenda on December 9th or we keep working on it for some other period of time. Because the staff could incorporate this, and some of it's already in the work that you're going to be done. I mean you could maintain the same schedule and have this information for the council before December 9th.

>> Leslye Krutko: That's correct.

>> Mayor Reed: It's theoretically possible. Or we could go back to the council as Councilmember Constant is suggesting, do you really want to get this on by December 9th or do you want to extend the work plan and do additional work?

>> Councilmember Constant: My concern along those lines is doing the analysis of the alternatives I don't believe can be done in the next five weeks.

>> Councilmember Chirco: Mayor.

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Chirco: I would like, you know, because I was one of the supporters of this, I would like the work as directed by council in June to continue forward to its conclusion. And then what Councilmember Constant and Oliverio are asking for, I think when it comes to the council on the 9th, possibly to then have that discussion about the additional information, does that -- is that possible?

>> City Manager Figone: Yes, I think you know it's possible. What I hear in testimony on both sides is, you know, fear about what the product's going to look like. And I think from staff's perspective we are very open to once we bring you the product in the form that we've been working on it to be prepared for more direction, perhaps we haven't hit the mark. I believe we've been doing the best that we can under the direction that we've had. But quite frankly, as you know, these policies evolve over time. I mean, look at the living wage issue, last evening. So yes, we would be prepared, when we come back to you, to receive additional direction at that point in time.

>> Councilmember Chirco: And I really like what the mayor said, when you have something tangible, that's a different conversation and a different level of involvement. I really like going back out with a proposed policy to get feedback which I think creates a different dynamic.

>> Leslye Krutko: And that will be available in the next couple of weeks so we expect to have that available.

>> Councilmember Constant: The concern I have with that path is if we're going to direct, if we meaning the council are going to correct some more specific outreach to help in the formation of a policy then it's too late. And if -- if we're going to direct, to really look at the concerns of why it's not the best policy for San José, or to do a real in-depth analysis of the other options, I don't think we can have that in time. So what I'd like to do is just hear from Councilmember Oliverio for a moment.

>> Councilmember Oliverio: So for example our general plan 2040 is an overarching direction from the council to plan the city until 2040. However Planning Department comes back and checks in periodically with the way they're going. And I think when you have these large overarching policies that are forever and citywide, that it behooves us to do those steps to do a check back with the council. This is where you've you've directed us, this is where we've gone so far, is that right? It's simply a conversation at the council level where certainly as mentioned staff has the direction to go where they're going but certainly, I think we're to the point of responsibility that having that discussion at the council level and being able to have that discourse would be fine.

>> Councilmember Chirco: Which you know, and so it sounds like coming back with the information as directed by council, on December 9th, and then council can look at Councilmember Oliverio and constant's memo as part -- you know, this would be one item and housing would be the other.

>> Councilmember Oliverio: Preference would be, this one would go first, just to check in with the housing department and staff to do the check in and then bring it back at that point. But to do them both at the same time puts us in a precipice of a decision that is not as well formed as it could be.

>> Councilmember Constant: So I'm going to withdraw my motion and restate it. I would like to make the motion that this be referred to the city council, to consider redirection to staff in the areas listed in items 1 through 4 on this memorandum, so that the work can be done, if the council so chooses, before it comes back to the city council. That's my motion.

>> Councilmember Chirco: Before the --

>> Councilmember Constant: Yes.

>> Councilmember Chirco: The direction? I'm challenged by that. The direction was very explicit. In the June 17th council meeting, as to what council, as a body, had directed staff to do.

>> Councilmember Constant: Right. And I'm asking council to reconsider the direction based on this information that Councilmember Oliverio and I have put forward. And I think it is reasonable on something of this magnitude to ask the council to have a check-in and reconsider direction. Because if we don't, I agree with Councilmember Oliverio, it won't get the attention that it deserves.

>> Councilmember Chirco: Well, we will just have to respectfully disagree.

>> Mayor Reed: I don't think this is an argument about process. That's why we're nervous about having this on December 9th. We make decisions on Tuesdays. That is one of the reasons why the public would be nervous, we make decisions on Tuesdays. But whether or not we're going to have an inclusionary policy of some kind, there are a custom alternatives to what you've suggested, Councilmember Constant. So far, there's not a second for your motion. We really only have two dates before December 9th, November 18th and December 2nd. That's it. Those are the meetings. As we can't put this on next

week's agenda even if the committee wants to do that. It's a little bit late. We could certainly ask, have the council determine that December 9th is not an action agenda, it could be a study session so we could discuss it. But I think we have marching orders from the council, from the June meeting, the staff was bringing back a policy. With alternatives. And so I'm not going to be too critical of staff and their work, because they're just doing what we told them. And we did have an outreach discussion and we did discuss what model we would use and there were a lot of different models, task forces and work plans. And what was your model from the just cause housing thing? It wasn't a task force it was something else.

>> Vice Mayor Cortese: It was interest based mediation. Let those people work it out.

>> Mayor Reed: Something like that. We discussed that and we gave staff an assignment that was somewhat of a compromise I guess and maybe that's why it's being handled in a way that some people don't like. But it was really the council direction. So I don't think as a Rules Committee we ought to be changing the council direction. So really the appropriate thing is to ask the council if they want to change direction. So I understand the motion. But so far there's no second.

>> Councilmember Constant: So I'd like to ask, what's the harm in getting this on the 18th agenda which is before several of the key dates had a we've discussed, and giving the council a chance to weigh in. The council can choose not to and we will progress the way we are, and leave it to the date in December, I believe you said it was the 9th, or the council can say we've looked at it, we agree there is some areas that we would like to biff redirection and here's the redirection. I don't see where the harm is having that discussion before the 9th and we could do it on the 18th of November.

>> Mayor Reed: Yes, Vice Mayor.

>> Vice Mayor Cortese: I can support a check-in with the council mostly as a courtesy to those who want to give it another try with the council that obviously voted one way. But if the two of you want an opportunity to go back to the council two or three weeks before a policy comes forward and say, hey, before this policy comes forward, we want to make sure that the council's comfortable with that at this point. That's a fundamental question.

>> Councilmember Constant: And that's all I'm asking for.

>> Vice Mayor Cortese: If that's what you want to do I'm comfortable with that but your motion would have to be limited to that and it would not be intended to prevent housing to move forward. First I don't think we're empowered to do that and secondly, the work that they're doing it seems to me is going to go towards any final solution no matter what happens. They're gathering information, input, they're gathering commissions, no matter what the process looks like, that's going to have to be done.

>> Mayor Reed: Thanks to our City Manager we're getting suggestions. We do have an open spot for possible study session November 19th.

>> City Manager Figone: Excuse me, December 19th.

>> Mayor Reed: December 19th, one thing. And then I think to remind Councilmember Constant that he's not going to be here November 18th.

>> Councilmember Constant: Oh, I guess that's true. [Laughter]

>> Councilmember Constant: We also have the November 10th date that you questioned earlier that we all had saved on our calendar I believe.

>> Mayor Reed: That study session date.

>> Leslye Krutko: I think the concern for us is that I suppose if it's just a check-in that's fine. If we were expected to have any materials for that clearly that would be too early. Just to remind where we are, we do have noticed meetings that have been noticed in the paper that are for the 3rd, 6th, 10th and 12th of November. We also have a housing commission meeting on the 13th of November, a Planning Commission meeting on the 19th of November and then we have the two special meetings that have been set with the two committees that were to hear this. So we would expect, by the 18th, to already have something, an -- in document form, that is ready to be reviewed. So that's by the middle of November.

>> Mayor Reed: But not by November 10th.

>> Leslye Krutko: Not by November 10th, no. It's a little early for us especially because we weren't expecting on this information here we probably would have been providing it a little bit after the date, because of the timing of --

>> Councilmember Constant: I don't think the council needs the documents to decide if they want to give some redirection. And I don't think that the redirection would affect the meetings that are already noticed. The council will either say no, proceed as-is, or continue but add these one, two, three or four items.

>> City Manager Figone: Mr. Mayor, I mentioned the December study session date, if you wanted some slippage for review of the staff work. Not for purposes of a check-in.

>> Mayor Reed: We do have the December 16th meeting which I think is the worst time of year to have a policy discussion. If we were to bump it, December 19th, which we may not even have a quorum for, I don't know.

>> Councilmember Oliverio: It sounds like we're trying to do a lot at once, and perhaps January is a better time frame for staff to attend and do those types of things but we're kind of going down a barrel here.

>> Mayor Reed: So let me go back to Councilmember Constant's motion. Motion is to put this on the council agenda for the 18th.

>> Councilmember Constant: Well, I guess now the 2nd. I forgot I'm out of town. So I guess that's the only option we have.

>> Vice Mayor Cortese: Can I just ask a clarifying question, if the draft policy is going to be out by the 2nd anyway and if your intention in part is to have an opportunity to redirect the process, prior to a policy coming forward, I'm trying to understand timing-wise how a December 2nd meeting creates that intervention. It seems like it's an intervention coming two weeks too late. Because the draft policy is going to be out around the 18th.

>> Councilmember Constant: I guess that's what happens when we have two meetings in a month, you know. And I just don't understand why we're on such a inclusion course with time, when this is not a time sensitive issue. I think we're asking for something relatively simple, ask the question if we're going to redirect. If it ends up delaying things two weeks, it's only going to delay things two weeks. We delayed other things that are much more time sensitive a lot longer than this. But you know it's going to be the pleasure of the Rules Committee and I'm just asking some courtesy so we can have this discussion at council.

>> Mayor Reed: So you're -- the date would be December 2nd?

>> Councilmember Constant: Yeah, it would be pointless to have it if I'm not here.

>> Vice Mayor Cortese: Given that we're no longer in a two-week turn around from today. My recommendation, it's been a healthy discussion. My recommendation at this point is that we don't need to take an action on a December 2nd add today. That whatever it is specifically that you or Councilmember Oliverio would like to do on or about December 2nd, that you have the opportunity to submit a memo through the clerk's office for the next Rules Committee meeting and give some thought to exactly what you want to do sequentially here. Because if it involves delaying something, adding something et cetera, I'm not sure we'll be able to work that out today. Or even if it's fair to the people --

>> Councilmember Constant: I know what I want the council, delaying it a week is not going to change that in the least. It's a matter of whether we're going to get this on a council agenda or not.

>> Councilmember Oliverio: The ability to check in for the council to update and have the discussion prior to a vote of finality would seem fair. I don't know where in the role of rules, we could press the December 9th meeting to January, and then have an update in December, we go on our way. We vote in January, you've laid the piece with the other side of the fence and go forward. And if it passes, it passes in January. We have an inclusionary policy but at least it is allowed to be vented with the different discussions and alternatives.

>> Vice Mayor Cortese: If the issue is simply adding a check-in on December 2nd as to what we should do from that point on, I'm comfortable seconding that motion. But as I said earlier it would have to be simply that motion, for me to second it. And no delay to what's -- what the council is currently put forward. Implicit in that, why we're going on the 2nd in the first place, that's why the charge, we want to make that clear here so staff doesn't feel like they're wasting their time if they continue to carry out the work plan.

>> Leslye Krutko: Our memo for the 9th will clearly have been submitted to the public prior to the 2nd so --

>> Vice Mayor Cortese: That was the sequence I was worried about earlier. You still could have a check in with the memo out or without the memo out. Ask the council do you really want to take this up? It's really a deferral question, there's plenty of time between now and December 2nd to make that move. Either come to rules and ask for an add or, might be simpler than trying to continue to -- working to get this entire memo on in the 2nd because of the compressed time frame and the sequence of events.

>> Councilmember Constant: This committee decides, makes decisions all the time on whether to defer or not. We have that ability. We're asking, two councilmembers are asking, several members of the

public, the stakeholders are asking, that we give the opportunity for the council to discuss this. And I don't see the harm in that coming. And if the council, on December 2nd, says, six votes say yes, you're right, maybe we should look at these things and bring this entire packet back on whatever date that may be, that council should be able to do that. Or the council could, by six votes, say sorry, Pierluigi and Pete, we're not going to do that, we're going to hear this next week. I don't think that's an unreasonable request.

>> Mayor Reed: We could do that on December 9th as well. Let me suggest we set a meeting on December 10th and have it far enough ahead of the December 9th date to have some impact on whatever it is we're doing. Let's set a special meeting.

>> Councilmember Chirco: Mayor, would the December 10th meeting, is that a study session?

>> Mayor Reed: November 10th would be the date. November 10th.

>> Councilmember Chirco: To?

>> Mayor Reed: To talk about basically the schedule. And the fact that we're headed to a December 9th council date and let the county decide whether they want to hear it on the 10th. At Rules we decide these are ready or not ready to go to council. On November 10th if we had a date it would be essentially making that decision as a committee as a whole, saying we think it should be ready by December 9th or not. If December 2nd doesn't work, November 18th doesn't work, November 4th doesn't work, then maybe a special session is necessary.

>> Councilmember Constant: We all have a special study session at 1:00 on December 10th so I think that would work.

>> Councilmember Chirco: There are public meetings scheduled for the neighborhood services and education and Community and Economic Development. And the Planning Commission and the housing commission. So would -- would all the work continue? And this kind of -- the 10th would just be a council check-in, but the work would continue?

>> Mayor Reed: I think the work would have to continue until the council pulls the plug. November 10th and the work plan is what it is? And the work plan ought to move ahead.

>> Vice Mayor Cortese: That would be part of the motion, the motion is to not interrupt or interfere in any way with the current work plan.

>> Mayor Reed: All right, we have a motion?

>> Councilmember Constant: Yes.

>> Vice Mayor Cortese: Seconded.

>> Mayor Reed: City Manager suggests that before we decide to go on November 10th that we actually consider November 4th, because we do, as a committee, occasionally put things on the next Tuesday's agenda. And this memo is at least ten days before the date of this memo is ten days before. So that would be another alternative is to do it on Tuesday instead of setting a special meeting on November 10th.

>> Councilmember Constant: I'm okay with that, too. So if the Vice Mayor amends, I'll give the second.

>> Vice Mayor Cortese: I couldn't in good conscience do that. For that, I see about half a dozen people in the audience I know are working on different propositions and measures and everything else that they're going to be distracted with that day. I just think it would be -- we'd be criticized later for interfering with public input by having it on that day.

>> City Manager Figone: Mayor our reason for raising it is just to let you know you have that option. We didn't want to imply that it was against the rules in any way. It may not be convenient or practical.

>> Councilmember Constant: I'll stick with the motion for the 10th.

>> Mayor Reed: Motion for the 10th. All in favor, opposed, none opposed, we'll have a study session on the 10th, to look at the work plan and the timing.

>> Councilmember Constant: Thank you.

>> At what time?

>> Mayor Reed: 1:00. One item only, special council meeting 1:00 on November 10th. All right, we still have a little bit of time left. And I think the next item we need to take up is the resolution on smoke-free multiunit housing. Which is not earlier than 2:30. We managed to get past that time with time to spare. We have a memorandum from Councilmember Williams and Councilmember Chu. Councilmember Williams was here. We do have a memo. We do have some speakers on G-2 so let's take those. Francis Skapilli, Hugh Joiner and Scott Ho.

>> Good afternoon everywhere. My name is Francis Skapilli, on behalf of the Santa Clara County health department, as everyone mostly knows in January 2006, the California air resource board 1 minute travel

within multiunit housing complexes through shared ventilation systems, heating and air conditioning systems, and what we've found out through various surveys is that 46% of California residents surveyed say they have been exposed to secondhand smoke. And over 46% of the renters support nonsmoking sections in apartment complexes. Our tobacco free coalition of Santa Clara County voted to address smoke free housing here in Santa Clara County two years ago. As of now, the Santa Clara County smoke prevention and education program has smoke free housing as one of its five year objectives for its current plan. Other cities across California have begun to work on this issue.

>> Mayor Reed: Sorry your time is up. Sorry, you had to get behind the inclusionary housing discussion. Please leave that if you wish. Hughett joiner.

>> Hughett joiner from Breathe California. First we'd like you to know we're supporting this measure. We've been in San José since 1911 fighting for lung health. Breathe California has had a smoke free help line, for two years. Smoke free parks which was implemented last year, since 2005, Breathe California has been working with secondhand smoke policies in San José. We have also met with the councilmembers, regarding smoke free apartment complexes and parks. We also lead the tobacco free collaborative since 2002 and we have approximately 119 surveys with San José residents regarding secondhand smoke in apartment complexes if you would like to view those. Thank you.

>> Mayor Reed: Scott Bu and then Keisha whose last name I can't read.

>> Hi I'm Scott Vu with the health trust and speaking on behalf of the health trust here to support and applaud Councilmember Williams efforts on addressing the issue of secondhand smoke and multiunit housing and I won't need to go into the details on secondhand smoke dangers. That's well documented and so we hope that you will join us in our efforts to make Silicon Valley the happiest region in America. Thanks.

>> Mayor Reed: Keisha Nzewu.

>> I'm representing the American heart association as it's no surprise that both heart and lung disease, both of those diseases come from exposure to tobacco smoke whether it's passive or as smokers. So we are here to encourage your support of this resolution, to support smoke free multiunit housing and protect those who choose not to smoke from exposure to smoke. Thank you.

>> Mayor Reed: Josh Howard and then Ralph Morales easy.

>> I first wanted to thank Councilmember Williams for reaching out to the rental housing industry very early on in this process to solicit our input and feedback on the variety of different policy or resolution options that he was considering. I want to say that the resolution affords flexibility to rental property owners, many of whom are already adopting smoke free policies in their rental units voluntarily on their own recognizing the demand from their customers. Without going as far as an ordinance we support this resolution because it provides opportunity to respond to the market, and their renters smokers or not smokers. And we're here to educate rental property owners how they can implement this in their buildings. Thank you.

>> Mayor Reed: Ralph Borellas.

>> I'm here on behalf of the American lung association of California. I'll leave this with you to review at your leisure. We have been here 100 years and planned to be here another 100 years. We offer our support, our technical assistance and in our experiences in various communities if you so ask us. Thank you.

>> Mayor Reed: Thank you. That completes the public testimony on this. I have a couple of word suggestions on the resolution. First, I have a question for City Attorney. In the first whereas it says the City of San José has the responsibility to ensure the health, wellness and safe living conditions as its residents. I don't think as a legal matter that we have that responsibility to ensure. Would there be a better word?

>> We were looking at the resolution. There are a couple of words in the resolution that need to be clarified or modified because of some of the statements in here maybe beyond what the City's responsibilities actually are. We'd be happy to work with the councilmember's office what the intent was. My understanding of the intent is to basically to set the statements with regard to the hazard of smoking but simply to encourage with no further action on behalf of the city other than to make that statement by the council.

>> Mayor Reed: I think that would be good. And then the last resolution where it says the City of San José recognizes that it is empowered to encourage landlords.

>> That's the other word I needed to clarify with the maker of the resolution. I don't think I know what he means by the word empower.

>> Mayor Reed: Strike to word empower. We don't have to say we're encouraging, let's just do it.

>> It's not clear what he meant by the second statement.

>> Mayor Reed: I'm talking about everybody ought to live a healthy and smoke free life and I think the last sentence refers to all San José residents, that's all. So we just refer this to the city attorney's office to work with Councilmember Williams' office to work on the language a little bit.

>> Happy to do that.

>> Public staff have to go to a 3:30 meeting unfortunately but we would like for the language is very similar to the resolution on health which was passed by council which is empowerment and encouragement. We didn't think of it as like a legal obligation but we're happy to work on it. Again, this is a copy or the language is similar to the one with the health resolution which was passed by council just a month ago.

>> Mayor Reed: Okay. Councilmember Constant.

>> Councilmember Constant: I just wanted to echo some of the comments that were made by the speakers. I think this is a good idea. I think any time that we use our standing in the community to promote something, and to encourage something that's what we should do and I think it's much better than a mandate. I know as someone who has had many tenants over the years, as a landlord I didn't allow smoking in my residence. And I think that anything that we can do to encourage other landlords to do the same thing, is a good thing.

>> Mayor Reed: My last comment little nitpicking, I wouldn't include the schematic about April air handling unit, it's interesting, it wouldn't be part of the resolution. We'll have that discussion about whether it should have special air handling equipment. Is there a motion?

>> Councilmember Constant: Yes, I'd make the motion to forward this to council after the attorney works with the councilmember to work on the language.

>> Councilmember Chirco: Second.

>> Mayor Reed: Okay. All in favor? Opposed? None opposed, let the work be done. We have a recommendation city council agency board accept disclosure of property interest by Keyyy Adams Hepner.

>> Councilmember Constant: Motion to approve.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approve, all in favor, opposed, that's approved. Don't have any committee agenda items to deal with. I think our last item of business has to do with the return back on the work plan responding to the Sunshine Reform Task Force recommendations and our last committee discussion. Which was lengthy. It was a special meeting. So staff.

>> Tom Manheim: Thank you, Mr. Mayor.

>> Mayor Reed: And we only have 20 minutes left.

>> Tom Manheim: I will make my introduction fairly brief. I did want to clarify a couple of things. The memo we sent back to you with the work plan had sort of three areas of general direction. You see them in front of you. I wanted to clarify, on number 1 there where we said generally follow the California public records act in our approach to make law enforcement records public. What we were intending to capture there was the, sense we heard from the committee that the general approach ought to be to identify the specific things that would be made public, rather than, to approach it with all records are public, and identifying the specific things that would be redacted. So I did want to clarify that. On number 2, there would be work with the task force, public records subcommittee chair. That first meeting has already happened. So that work has already begun. And on behalf of the Bert Robinson the subcommittee chair I'll just mention, he could not make it here today. I believe you have a memo from him. And then if I could just very quickly go to the seven specific items we heard coming out of this. One was to meet with Bert Robinson and identify what information the task force believes is currently not being released and see if we couldn't reach agreement on what should be released. Number 2 then for the police department and the district attorneys office, to evaluate what changes if any they might need to make to current practice, to support the timely release of information, consistent with whatever comes out of number 1, that clarification of what would come out of number 1. And my memo there references number 4, we did a little cutting and pasting. I apologize, that is actually a reference to number 1 in the memo. You asked us to institutionalize, and you asked us to come back to you with how we would institutionalize, how the police department does respond to public records requests. There was a comment by attorney James Chadwick regarding a Supreme Court case that would allow us to do something specifically different for the media. We need to look at that, check those citations, make sure that we legally can do that. There

were comments made by the executive director of next door solutions about some information she was not able to get, or the agency was not able to get that they have requested. We'll get back to you with more information about what information we were able to get, and what the base was for not giving them more information was. Following up on the budget direction from the June or March budget message, June budget message, looking at how we can systematize and work on the RMS system and then finally you asked us to look at how Honolulu was doing it. Our intention was to follow up on that set of directions and come back to you by early December. If in fact we've captured your intent correctly. And this is really just an opportunity for you to let us know whether or not we did capture your intent.

>> Mayor Reed: Well, I think it was pretty close. And what I would like to add to that list is to take Bert Robinson's memo from the task force and add those items specifically suggested as things for you to look at as alternatives in the additional information for the media category. Because we don't know what that is. We're talking about doing more. We've had a discussion about synopses and summaries, and now we have, you know, a request to consider form 2s, form 3s neither of which I know anything about and force response reports under limited circumstances when a criminal complaint is filed. And some other things. So I think we ought to at least look at that from the task force's specific recommendation, we can do it or not do it or some modification of that. And so I would basically add that to the work that you've outlined.

>> Tom Manheim: And if I can just clarify, the memo is two pages long. But you're referring to the six bullets specifically, where he lays out specific language.

>> Mayor Reed: Yes.

>> Tom Manheim: Okay.

>> Mayor Reed: And then the other part that I don't understand that I'd like to have staff be prepared to discuss at some point is the reverse balancing test, as opposed to the balancing test.

>> Tom Manheim: Right.

>> Mayor Reed: I don't know how that would fit within the framework of when we would go beyond the framework of the public records act.

>> Tom Manheim: Okay.

>> Mayor Reed: And I had one other question that was raised, one of Bert's recommendations was we specifically exclude reports produced by other agencies so we're not make people nervous. In some of the areas some of the agency reports would get to be part of our report.

>> Tom Manheim: I do believe they get incorporated into our reports.

>> Mayor Reed: There's that issue but we don't need to decide that today. Any other comments on the work plan?

>> Councilmember Constant: No, just the other thing I would ask to be looked into and maybe the chief wants to comment, is we do have sometimes other police agencies write courtesy reports for something where they may handle it for the police department. I think that just needs to be addressed as far as where we're looking at other agency reports and see where that falls in.

>> Mayor Reed: Yeah, because they won't have the protocols in place and won't be at the speed, and that could raise some problems.

>> Vice Mayor Cortese: I'll move the recommendation.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to move the work plan, I have two requests from the public to speak to this. Let's take those now. James Zoretka and Betsy Wolf-Graves.

>> Thank you, Mr. Mayor. James Zoretka again from the law foundation of Silicon Valley. I would like to say we generally agree with Mr. Rob I be son's comments, we also agree with his point not in the six bullets that the original proposal, is preferable to what's now before you. But failing that we agree with what Bert has to say except we do disagree with the idea that only reports that led to a criminal complaint being filed, be made public, since those my understanding is those are all generally attached to whatever goes into the court file, there really is no additional openness being served. If you only release those -- arrest reports that lead to a complaint. Certainly there is an issue of keeping arrestees identity secret. We value that highly but there seems to be easy ways to redact identifying information and still make those public to organizations like mine, to let us perform the watchdog functions we're here for. And I would just make one additional point which is, it seems to me that the underlying premise of the public records act is openness is the presumption not confidentiality. These can be released and only these, everything else is private, turns it on its head to me. That underlying premise is a bit flawed. I appreciate your time. Thanks for your consideration.

>> Mayor Reed: Thank you. Betsy Wolf Graves.

>> Now --

>> Mayor Reed: You're okay.

>> I'm Betsy Wolf Graves. I'm with Silicon Valley ACLU board. And also, debug. I raise their median age considerably. One of my concerns about your response to the law enforcement records is, that if you water them down so, I'm wondering, who is going to have an end oversight of our law enforcement? You know, the California bar is now oversight of our DA, and public defender, the sixth district Court of Appeals is using its oversight privileges. Now, you've spoken about protecting victims, and I think this is important. But no one has spoken of the victims of law enforcement. And if not the sunshine task force, who is going to protect and recognize victims of law enforcement?

>> Mayor Reed: I'm sorry, I need to have you wrap it up.

>> I don't think, police officers who are hypervigilant and overactive will continue to be on the force compromising the reputations of those officers who are competent and professional.

>> Mayor Reed: Thank you. Rag Jaydev and Jay McCracken.

>> Tom Manheim: Squeeze it and slide it down.

>> Betsy is a little taller than me. Hi, thanks for having me. I'm Raj with Silicon Valley debug, we work with folks that have issues with the criminal justice system and have personal experiences. I'm here mainly to speak on behalf of them and urge the Rules Committee one, to push forward with all the hard work that the Sunshine Reform Task Force subcommittee has done. It is my understanding having sat through some of those meetings that that was a negotiated position to begin with. If this committee cannot support the hard work and the policy that was directed from them, I urge you to follow the recommendations from Mr. Robinson, as a negotiated position. Given the fact that there's been time and time again of these new reports coming out around possible misconduct with police department I think it's important now more than ever to have real authentic sunshine laws in place to rebuild the public's trust, not only the policemen but local governance.

>> Mayor Reed: John McCracken.

>> Good afternoon. Joann McCracken with the district attorneys office.

>> Mayor Reed: Push it up a little bit.

>> How's that? Better. I have several comments about Bert Robinson's suggestions, I'll reserve that for later in time. I want to comment now only on his suggestion that we can avoid some of these problems by simply not making the police report public until a complaint is filed. And my question is, for the work group perhaps, is why don't we then just have the person who wants the report get it from the court? And the reason I think that would be important is because the District Attorney's office and the court often redacts a lot of private sensitive information. Sometimes what's redacted is because of private information of the parties. And this is overseen by a judge. If the turning point is a case being filed then we shouldn't open up for the possibility that the police don't know what the courts have already done concerning privacy and victim safety and et cetera, simply get the report from the court, if that's the point that turns it. And also often, not often but sometimes, police reports are not filed with complaints, with criminal complaints are filed with affidavits. And that's an important consideration too because that's done typically in cases where it would be -- it would endanger the public or investigation to file the police report. Thank you.

>> Mayor Reed: Thank you. I think that completes the public comment on this item. We do have a motion to approve the work plan as modified. Further discussion here in the committee? Okay all in favor? Opposed? None opposed, that's approved. I think that completes our agenda except for the open forum. Anybody that wants to speak on something that wasn't on our agenda within the subject matter jurisdiction of the City of San José? No, okay. We're adjourned.